PSYCHOLOGICAL RIGHTS OF CHILDREN IN MATRIMONIAL DISCORD: A CASE STUDY IN DELHI-NCR

SHORT SYNOPSIS

Submitted in partial fulfillment of the requirement of the degree of

DOCTOR OF PHILOSOPHY

by

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It is the work that is expected to be carried out under the supervision of Dr.Aaratrika Pandey, Assistant Professor, School of Law, Manav Rachna University.

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ABSTRACT

Divorce proceedings often mark stormy part in the lives of people, but children are the heavy bearers who endure its most lasting consequences. Caught between the heated argument of the parents, children face emotional, psychological and social toll. This research, taking Delhi-NCR as focal point, examines how these prolonged legal battles negatively affect the children. It critically examines the inadequacies or limitations of the current legal provisions in addressing the issues related to children's psychological health and needs during the parental separation proceedings. Apart from dealing with the local laws, it also undertakes the comparative analysis of global practices which are aligning with the principle of "*best interest of the child*". The findings or the outcomes of the present research advocate for the reform in the present legal approach to one that focuses on the child's interest on a stronger note, which could protect them from psychological distress or trauma by reling on the international benchmarks. The study aims to call for legislative reforms that ensures that children's psychological rights are not overlooked, but are proactively protected in any case.

Keywords: *Children's Rights, Psychological Health, Matrimonial Discords, Legal Reforms, Delhi-NCR studies*

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I. INTRODUCTION

In the last few decades, the increasing number of marital cases in India has highlighted the often-overlooked issues like the impact of prolonged legal fights on children's psychological health[1]. legal system are mostly focused on the 'parents rights', such as who will get the custody- mother or father, or who will have the visiting rights, or how will the property rights or maintenance be decided, but while deciding this the things turns into vulgar due to involvement of greed of the parties, which harshly effects the child's innocent mind. For a child who is involved in this tussle, once a happy home becomes his biggest nightmare, putting at risk his entire psychological health and mental well-being.

"The United Nations Convention on the Rights of the Child (UNCRC)" says, every child has the 'right to protection' from all forms of harm, be it emotional or psychological, further they have the right to grow in an environment conducive to their full development.[2]

Matrimonial disputes refer to ongoing conflicts or breakdowns in marital relationships between the parties that may or may not result in legal separation. However, in many cases, especially in urban and densely populated regions like Delhi-NCR, these disputes can lead to court proceedings, which might involve custody disputes, raising allegations of parental neglect and abuse. These types of situations often expose children to an environment of chronic stress, emotional instability and weakened support systems.

The term psychological rights of children refers to the entitlement of children to mental and emotional well-being, which includes protection from psychological abuse, neglect, or emotional trauma. Even the Constitution under its Articles 39(e) and (f) provides broader protection to children[3]. It mandates that the state must ensure that the children are not abused and are given opportunities to develop healthily.

Because of the suffering incurred during matrimonial disputes between the parents, children goes through difficulties such as behavioural problems and *"Parental Alienation Syndrome"* (PSA)[4], which leads to issues such as anxiety, depression, trust issues, and challenges in forming healthy social relationships. Therefore, understanding the specific rights of children in this matter becomes crucial.

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[1]Changing trends of divorce in India: issues & concerns (2008) International Journal od Management Technology and Social Sciences

[2] United Nations (1989) *Convention on the Rights of the Child*.

[3]Constitution of India under its Articles 39(e) and (f), *Directive Principles of State Policy*

[4] Vivek Singh vs Romani Singh , (2017) 3 SCC 231

Indian courts have emphasized the term paramount consideration while deciding matters related to child custody. In **Saraswati Shripad Vad vs. Shripad Vasanji Vad[5],** the court has specifically said that, *"It is not the welfare of the father, nor the welfare of the mother, that is the paramount consideration for the court. It is the welfare of the minor and of the minor alone which is the paramount consideration…."* Similarly, in **Sheoli Hati vs. Somnath Das[6]**, the "welfare of the child" was marked as the major concern by the court. In **Vivek Singh Vs. Romani Singh[7],** the court stressed the *"twin objectives of the Welfare Principle*", stating,

> *"...The welfare principle is aimed at serving twin objectives. In the first instance, it is to ensure that the child grows and develops in the best environment. The best interest of the child has been placed at the vanguard of family/custody disputes, according to the optimal growth and development of the child and has primacy over other considerations. This right of the child is also based on individual dignity. The second justification behind the welfare principle is the public interest that stands served with the optimal growth of the children. Child-centric human rights jurisprudence that has been evolved over a period of time is founded on the principle that public good demands proper growth of the child, who are the future of the nation…"*

Not only the domestic courts, even the international forums have emphasized the matter of child welfare. **In re B (A Child) [2009] UKSC 5[8]** The court emphasized that the child's welfare is the paramount consideration in the custody disputes. Even the International Court of Justice (ICJ), in **Netherlands vs. Sweden, 1958 I.C.J. 55[9]**, emphasized that the protection of children is a fundamental aspect of public policy in deciding the custody cases. The court also acknowledged that, in exceptional circumstances, national laws prioritizing child welfare could override international agreements to ensure the child's best interests are served.

The international organizations also from time to time to protect and promote children's interest has taken major initiatives such as forming of: United Nation Convention on the Rights of the Child (UNCRC), 1989, United Nation Children's Fund (UNICEF), Hague Convention on the

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[5]Saraswatibai Shripad Vad vs Shripad Vasanji Vad, 1940 SCC OnLine Bom 77".
[6]Sheoli vs Somnath Das, (2019) 7 SCC 490".
[7]*ibid, pg 1*.
[8]*In re B (A Child) (FC)* [2009] UKSC 5.
[9]*Guardianship of an Infant (Netherlands v. Sweden)* (1958) I.C.J. 55, International Court of Justice, 28 November 1958.

Civil Aspects of International Child Abduction (1980), World Health Organization (WHO), etc". these bodies provide for the "best interest of the child[10]. Be it mental health or legal support, or to promote the well-being of the children. Despite all these initiatives and all the national and international frameworks, children still end up suffering when caught in these conflicts. This happens because of a lack of uniformity in applications of these norms, which highlights the urgent need for reforms in this area.

II. LITERATURE REVIEW

Papers and Articles

Priyanka P. Nambiar, Kavita V. Jangam, and Shekhar P. Seshasri[11] After conducting a qualitative study exploring the impact of child custody disputes on children's mental health in Urban Bengaluru, highlighted that the increasing cases of divorces in India are leading the children involved in it to mental distress. The children face various psychological challenges. Therefore, calling the need for child-sensitive approaches in legal proceedings to mitigate the adverse mental health problems in children during and after the legal battles.

Clorinda E. Vélez, Sharlene A., Wolchik, Jenn-Yun Tein, and Irwin Sandler[12] conducted an extensive study and found a coping mechanism to cure the children suffering from the aftermath of the legal battle. Their study highlighted the need of active parenting, focusing on children's emotional regulation post-divorce.

Priyanka P. Nambiar, Kavita V. Jangam, and Shekhar P. Seshasri[13] say that despite being one of the deeply impacted scenarios, the problem of "*parental alienation*" and its effect on children's mental health and emotional well-being remains under-recognized in the Indian legal system. In this paper, the authors have presented four clinical case studies from South India, illustrating clear signs of alienation such as *unwarranted denigration of one parent, the use of adult-like or age-inappropriate language by children, lack of remorse, and black-and-white*

[10] Samuels, F., Jones, N., Gupta, T., Dang Bích, T. & Đào Hồng, L. (2018) *Mental health and psychosocial wellbeing of children and young people in selected provinces and cities in Viet Nam*. Hanoi: UNICEF Vietnam & Overseas Development Institute.

[11]Nambiar, P.P., Jangam, K.V. and Seshadri, S.P., 2024. Psychosocial perspectives on child mental health in custody disputes: A qualitative study from urban Bengaluru. *Indian Journal of Psychological Medicine*

[12] Vélez, C.E., Wolchik, S.A., Tein, J.Y., Sandler, I.N. and Jones, S., 2011. Protecting children from the consequences of divorce: A longitudinal study of the effects of parenting on children's coping processes. *Child Development*, 82(1), pp.244–257.

[13] Nambiar, P.P., Jangam, K.V. & Seshadri, S.P., 2023. Parental Alienation: Case Series from India. *Indian Journal of Psychological Medicine*, 45(3), pp.304–306.

loyalty splits. The authors have further argued that although the international forums and Indian Courts have acknowledged the issue of parental alienation, but have failed to give it legal recognition to help the children suffering from the same.

Paul R. Amato & Alan Booth[14]*,* in their study *"The legacy of Parents' marital discord: consequences for children's marital quality*", have argued that children are facing long-term intergenerational effects on their marital outcomes due to parental marital discord. The authors, after compiling the data from over 297 parents and their married adult children, have notably identified that specific parental behaviours such as jealousy, domineering attitude, quick temper, criticism, moodiness and emotional withdrawal have a strong impact on the troubled marital outcomes of such children. These types of behaviour reflect emotional instability and poor conflict resolution strategies, which may be replicated in children's intimate relationships.

In a review paper titled *"**Impacts of Marital Conflicts on Child Development**",* authors have analyzed how being exposed to parental conflict can adversely affect a child's physical, emotional and psychological development across all the stages of his life[15]. The authors have cited various studies to back their result that the children being exposed to such an atmosphere experience emotional withdrawal, social incompetence, risk-taking behavior and long-term relational difficulties. Therefore, considering all these factors, the reviewers have emphasized the need for a multi-disciplinary, community-based response to protect the children from these harms.

Vivek Kumar[16] says divorce has far-reaching and multiple effects on children in many ways, impacting not only their emotional well-being but also lowering their academic performances and leading to difficulties in social adjustments. By criticizing the current legal framework of India, Kumar has emphasized the urgent need for child-centric reforms, integrating socio-economic support and legal safeguards.

Similarly, ***Raid, W.J. & Crisafulli, A.,*** in their work titled *"Marital discord and child behavior problems*", systematically examined how the regular conflicts between the parents and disharmonious atmosphere of the home negatively affect the children. However, the major

[14]Amato, P.R. and Booth, A. (1997) *The Legacy of Parents' Marital Discord: Consequences for Children's Marital Quality*.

[15]Rafiq, N. and Rafiq, N., 2017. *Impacts of Marital Conflicts on Child Development*. Aga Khan University Hospital, Pakistan.

[16]Kumar, V., 2011. Impact of divorce on children: A socio-economic and legal study. *NALSAR Law Review*, 6(1), pp.124–139.

concern of the work lies in its gender- based differences in children's responses to the situation, which raises methodological concerns in this literature.

III. RESEARCH OBJECTIVES

1. To identify the rights of children in Matrimonial disputes, especially in Delhi-NCR
2. To compare the legal framework in India with international best practices.
3. To assess how effective the present legal framework in India, in protecting the children's mental & emotional health and social behaviour
4. To examine the role of the judiciary and other organisations in ensuring children's welfare during and after the matrimonial dispute.
5. To recommend the legal reforms and policy reforms that prioritize children's psychological rights in matrimonial disputes.

IV. RESEARCH QUESTIONS

1. What are the specific rights of children in matrimonial disputes in India?
2. Whether the current international frameworks and judicial practices effective in addressing the complex challenges faced by children involved in matrimonial disputes?
3. Whether the current national/domestic laws and practices effective in addressing the complex challenges faced by children involved in matrimonial discords?
4. What are the psychological rights of children, and what are the key challenges in protecting these rights?
5. What improvements can be made in the existing legal framework to enhance the well-being of children and protect their psychological rights?

V. HYPOTHESIS

H_A: The legal system in India, specifically in Delhi-NCR, due to its parent-centric approach, fails to adequately deal with the emotional and psychological rights of the children in Matrimonial discord, and adopting a global child-centric practice can improve their protection.

H_0: The legal system in India, specifically in Delhi-NCR, adequately deals with the emotional and psychological rights of the children in Matrimonial discord, and adopting the global practice can not improve their protection.

VI. METHODOLOGY TO BE ADOPTED

The study will incorporate the combination of both doctrinal and non-doctrinal (empirical) methodologies, which will basically be a mixed method.

- **Doctrinal:** The scope of this method will include a comprehensive review of the domestic and international legal framework related to children's rights, with special focus on psychological rights. The sources to be analyzed is Indian Constitutional provisions, Personal laws ("Hindu Marriage Act, 1955"; "Special Marriage Act, 1954"; "Guardians and wards Act, 1890", etc.), Landmark cases of apex courts like, (*Vivek Singh (2017), and Sheoli Hati*). International Conventions (e.g., **UNCRC**, **ICESCR**, **Hague Conventions**), Scholarly books, papers, articles, reports, etc. To do a comparative analysis on children's rights.
- **Non-Doctrinal (Empirical):** The objective of this method is to practically understand the practical challenges, mental health implications, and systemic gaps as experienced by children during legal battles. The tools that will be used to collect data will be semi-structured interviews, questionnaires and focus group discussions.

Sample and Participants

The targeted group size will be approximately 45-50 participants, which will include Judges, lawyers, activists, social workers, clinical psychologists, and counsellors, selected via purposive and snowball sampling.

Research Site:

The geographical focus will be Delhi-NCR, which will include family courts in Delhi, Noida, and Gurugram. Further, the visits to NGO's and other child protection organizations in the region will be made.

Ethical Consideration

While collecting the data the complete anonymity and confidentiality will be maintained (throughout the research), and the consent forms will be provided to all the participants.

VII. TENTATIVE CHAPTERIZATION

1. Introduction
2. International practices for the protection of children's rights in matrimonial discord.
3. Indian laws for the protection of children in matrimonial discord.
4. Case study in Delhi-NCR.
5. Challenges in protecting children's rights in matrimonial discord.
6. Policy recommendations
7. Conclusion and suggestions

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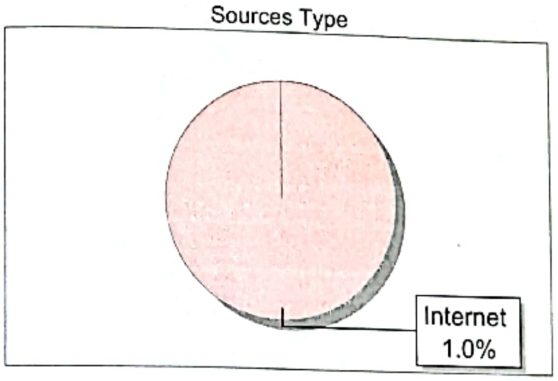

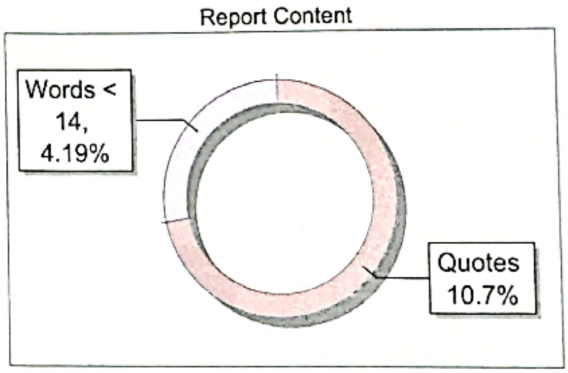

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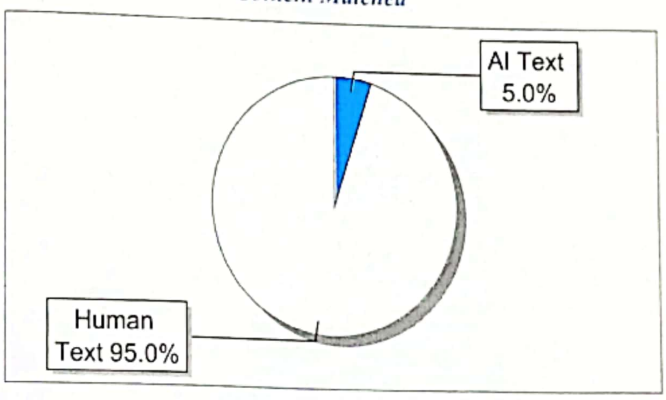

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